IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: JUDGMENT :

SHRI AMARA & OTHERS Vs. STATE OF RAJASTHAN

S.B.CRIMINAL APPEAL NO.110/1987
against the judgment dated 31.03.1987 passed by the Additional Sessions Judge, Nagaur in Sessions Case No.60/1983 State Vs. Amara and Others.

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Date of Judgment : 27th October, 2004.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Vineet Jain on behalf of
Mr.Sandeep Mehta, for the appellants.
Mr.J.P.S.Choudhary, Public Prosecutor.

BY THE COURT :

1. The present appeal has been filed against the judgment of Additional Sessions Judge, Nagaur dated 31.03.1987 passed in Sessions Case No.60/1983 State Vs. Amara and Others whereby the appellants were held guilty and convicted for the offence under Sections 307 read with Section 149, 326 read with Section 149, 325 read with Section 149, 324 read with Section 149, 323 and 149 I.P.C. Learned Additional Sessions Judge awarded following sentences to the

appellant:-

(i)Under Section 307 read with Section 149 I.P.C. : Sentenced to five years R.I.

(ii)Under Section 326 read with Section 149 I.P.C. : Sentenced to four years R.I.

(iii)Under Section 325 read with Section 149 I.P.C. : Sentenced to two years R.I.

(iv)Under Section 324 read with Section 149 I.P.C. : Sentenced to one year R.I.

(v)Under Section 323 I.P.C. : Sentenced to six months simple imprisonment.

(vi)Under Section 148 I.P.C. : Sentenced to two months simple imprisonment.

All the sentences were to be run concurrently.

2. In brief, the facts of the case are that an incident alleged to have taken place in the noon of 09.07.1983 at Didia Kalla in which three persons were injured and for which a First Information Report (Exhibit P-2) being

F.I.R.No.65/1983 was lodged at 6:00 PM at Police Station Mundwa District Nagaur by one Lakha Ram (PW-2). According to the version set out in the First Information Report the appellants and their family members bore enmity against the complainant party and on that date while they were collecting stones near their '*pole*' after sunset time, the appellants and two boys Arjun and Nathu came out there and on the exhortation of Amara and so also that of Dharu, Ram Niwas and Sangram hurled an attack. Ram Niwas had a sword who inflicted an injury on the head of Lakha Ram. In order to save himself, Lakha Ram moved his head whereupon an injury was received on the shoulder. Sangram also inflicted a '*lathi*' blow which resulted in an injury on the left wrist as a result of which Lakha Ram fell down. Sangram also gave a '*thad*' on the chest. Sanwata was assaulted by Arjun and Nathu with '*farsis*' as a result of which one of his fingers was cut. Chhagana was also assaulted with '*farsis*' by Amara and Dharu. On hue and cry being raised, Narayan came on the spot and Hardin Puri also tried to intervene. The assailants are reported to have returned from the scene under the impression that the complainant party had been sufficiently dealt with.

3. After the investigation, police submitted the challan against six accused appellants. The learned trial court after completing the trial and recording the evidence of 16 prosecution witnesses and taking 24 documents on record and recording the statement of five defence witnesses and taking defence documents on record and considering the entire material placed on record, convicted the

accused appellants for offence under Sections 307 read with Section 149, 326 read with Section 149, 325 read with Section 149, 324 read with Section 149, 323 and 149 I.P.C. as indicated above.

4. Being aggrieved by the aforesaid judgment passed by the learned trial court convicting and sentencing the accused appellants, the appellants have preferred this appeal.

5. The submission of the learned counsel for the appellants is that the prosecution has not come out with true genesis of the case, inasmuch as, according to the Injury Reports of Dharu Ram, Ram Niwas, Sangram and Smt.Parma (who is not accused here) Exhibits D-6A, D-7, D-8 and D-9 respectively, the injuries caused on these persons have not been explained by the prosecution, even though, the said injuries were received in the same incident as alleged by the defence by way of their First Information Report (Exhibit D-5) being F.I.R.No.66/1983 lodged at Police Station Mundwa on 10.07.1983 at 2:00 AM by Amara Ram (Accused No.1) for the same incident for which a case under Section 452 and 323 I.P.C. was registered. It is admitted by the prosecution witnesses that as a result of the investigation on the aforesaid First Information Report lodged by Amara Ram, complainants were finally facing trial for the offence under Sections 452, 323 and 324 I.P.C. It is, therefore, submitted by the learned counsel for the appellant that the prosecution witnesses have not come with true version of the case. According

to the learned counsel as per the law laid down by the Lordships of Hon'ble Supreme Court in the cases of Lakshmi Singh and Others Vs. State of Bihar reported in 1976 Cr.L.J. 1736, Dwarka Prasad Vs. State of Uttar Pradesh reported in JT 1993 (2) SC 168, State of Rajasthan Vs. Rajendra Singh JT 1998 (5) SC 193 and Subramani and Others Vs. State of Tamil Nadu reported in 2002 (Vol.7) SCC 210 in such a situation where the prosecution does not explain the injuries on the person of the accused, it is to be taken that prosecution witnesses are not deposing the correct position and are untruthful witnesses. Consequently, the learned counsel for the appellants submits that in this view of the matter, the appellants are entitled to the benefit of doubt and deserves to be acquitted. Learned counsel for the appellant has further submitted that the case hinges solely on the testimony of the alleged eye witnesses i.e., Lakha Ram (PW-2), Chagna Ram (PW-8) and Sawata Ram (PW-9) who are wholly interested witnesses. Learned counsel for the appellants further submitted that so far as two independent eye witnesses Haru (PW-4) and Narayan (PW-5) are concerned, their presence as eye witnesses is wholly doubtful, inasmuch as, Lakha Ram (PW-2) in his statement has clearly stated that said witnesses came on the spot after the incident was over. In this view of the matter, learned counsel submitted that there is no independent witness who has supported the case of the prosecution and Lakha Ram (PW-2), Chagna Ram (PW-8) and Sawata Ram (PW-9) are only interested witnesses who are also inimical to the accused, inasmuch as, there is a litigation pending between the parties relating to the agricultural land and few other criminal cases which are

earlier pending prior to this incident between the parties which have come on record in the evidence of prosecution witnesses. Learned counsel submitted that so far as Hardeen (PW-1) is concerned, who was also alleged to have seen the incident has not supported the prosecution case and was declared hostile. Learned counsel, therefore, submits that in this view of the matter, where the witnesses are inimical and are highly interested and who have suppressed the genesis of the entire incident by not explaining the injuries received by the accused persons, the testimony of such witnesses should not be relied upon. Learned counsel for the appellant further submitted that it has come in the evidence of Ramdeen (PW-10) that they had reached police station at about 4 O'Clock whereas the First Information Report was lodged at about 6:00 PM. It has also been stated by Ramdeen (PW-10) that F.I.R. was lodged after consultation and deliberation. In view thereof, learned counsel for the appellants submitted that it is a case of over implication and deliberately implicating the family members of Amara Ram and not disclosing the true version of the incident. Learned counsel submitted that ladies of the family Smt.Tija (appellant No.5) and Smt.Rukmai (appellant No.6) have been falsely implicated after consultation and deliberation, inasmuch as, the sole allegation against the said appellants is of throwing stones towards complainant parties. It is submitted that there are not corresponding injuries as a result of throwing stones which clearly shows that this is a false case of over implication.

6. Learned Public Prosecutor has supported the judgment passed by the learned trial court and submitted that learned trial court on the basis of due appreciation of the evidence has rightly convicted the accused appellants and, therefore, appeal calls for no interference.

7. I have considered the rival contentions made at the Bar and particularly the fact that in the instant case, the prosecution witnesses have not explained the injuries caused to the appellants which finds mention in the Injury Reports of Dharu Ram, Ram Niwas, Sangram and Smt.Parma Exhibits D-6A, D-7, D-8 and D-9 and when specific questions were put to explain the aforesaid injuries, they failed to do so.

8. The Hon'ble Supreme Court in the case of Rajendra Singh (supra) at para 8 of the judgment has laid does as under:-

> "All the witnesses had categorically stated that they had not beaten the respondent and seen any injury on the accused. But the evidence establishes that the respondent had two contused lacerated wounds; one on his face and one on his head. The injuries were bleeding injuries and visible and yet the witnesses stated that they had not seen any injury on the person of the respondent. That would mean that neither the family members of the Harveer nor the two independent witnesses were willing to give a true version and had tried to suppress the part played by some of them which had resulted in causing injuries to the respondent. The High Court was, therefore, justified in not placing reliance on their evidence."

9. The Hon'ble Supreme Court at para 7 of the aforesaid judgment has observed as under:-

> "In our opinion this contention is of no help to the appellant because their evidence has not been discarded on the ground that they were not present. Their evidence was discarded because they were found not telling the truth before the Court."

10. In this view of the matter, applying the aforesaid principal to the facts and circumstances of the present case, I find that prosecution witnesses have not explained the injuries which have been mentioned in Exhibit D-6A to D-9 produced by the accused appellants in this case by way of defence evidence and which are the injuries on the accused persons. Moreover, for the aforesaid injuries, investigation was held with respect to F.I.R.No.66/1983 and the complainants were chargesheeted and were facing trial for the offence under Section 452, 324 and 323 I.P.C. As such, the defence evidence of Exhibit D-6A to D-9 prima facie, finds corroboration from the fact that as a result of the aforesaid incident, some of the complainants were facing trial as admitted by the prosecution witnesses themselves.

11. As a result of the aforesaid, I am of the opinion that present appeal which has been pending before this court since 1987 and the accused appellants had been on bail during the pendency of this appeal and during the trial as well, for the incident which took place in the year 1983, deserves to be allowed and the

benefit of doubt be extended to the appellants.

12. Consequently, the appeal succeeds and is hereby allowed. The judgment of conviction and sentence passed by the learned trial court is set aside. The accused appellants are on bail, they need not to surrender, their bail bonds and surety bonds are discharged.

(DALIP SINGH),J.

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